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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,096	08/20/2001	Donald L. Schmidt	00-034	5482

7590 07/27/2004

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EXAMINER

VARNER, STEVE M

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/932,096

Applicant(s)

SCHMIDT, DONALD L.

Examiner

Steve M Varner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 8, 19, 20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-18 and 21 is/are allowed.
- 6) ☒ Claim(s) 1, 5-7, 10, 19 and 22 is/are rejected.
- 7) ☐ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Fig 10

### DETAILED ACTION

Since a new ground of rejection was applied against claim 1 which was not necessitated by applicant's amendment of the claim the final rejection of 3/30/04 was premature. The finality of the previous office action is hereby withdrawn.

Claims 2-4, 8, 19, 20, are cancelled.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

See Fig. 10 attached.

Claims 1, 5-7, 10, 22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan et al. '060 in view of Horobin.

Regarding claim 1, 22, Vaughan et al. '060 shows a first elongate plate (1450), a second elongate plate (1250) spaced apart from the first elongate plate, and a web (between 1250 and 1450) securing the first plate (1450) and the second plate (1250) in spaced apart relation. Vaughan et al. '060 shows the web forms a plurality of circumferentially closed openings (1210, 1220, 1230, 1330, 1320, 1310, 1430, 1420, 1410) arranged in at least two horizontal rows. Vaughan et al. '060 teaches each horizontal row includes at least two adjacent openings. (Fig. 15)

Vaughan et al. '060 does not show rounded openings. Horobin shows rounded openings. (Fig. 10) It would have been obvious to one of ordinary skill in the art at the

time the present invention was made to use rounded openings as in Horobin in the structure of Vaughan et al. '060 to reinforce the corners.

Vaughan et al. '060 shows the web includes a plurality of vertically spaced apart spanning members (1660, 1650, 1630, 1620) extending from the first plate (1450) to the second plate (1250), including an uppermost spanning member (1660) and lowermost spanning member (1620) and the plates (1250, 1450) extend above and below the uppermost (1660) and lowermost (1620) spanning member wherein each spanning member comprises intersecting straps (1260, 1460) selectively orthogonally oriented relative to the spanning members. (Fig. 15)

Vaughan et al. '060 does not show a plurality of orthogonal ridges extending along substantially the full length of the spanning member. Horobin shows a plurality of orthogonal ridges (56) extending along substantially the full length of the spanning member (Fig. 10). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use orthogonal ridges as in Horobin in the structure of Vaughan et al. '060 to increase strength.

Vaughan et al. 060 shows an additional horizontal row of circumferentially closed openings (1220, 1420) whose centerlines are arranged in a line and located to bisect the height of the first and second plates, the openings of the additional horizontal row having a nominal height (Fig. 15). Vaughan et al. '060 does not show rounded, elongated openings. Horobin does show rounded, elongated openings (Fig. 10). It would have been obvious to one of ordinary skill in the art at the time the present

invention was made to use openings as in Horobin in the structure of Vaughan et al. '060 to increase the width of the openings and reinforce the corners.

Regarding claim 5, Vaughan et al. '060 shows the basic claimed structure. Vaughan et al. '060 does not show a web including one brace connecting at least two of the spanning members, wherein said brace comprises intersecting straps selectively orthogonally oriented relative to the brace. Horobin shows a web including one brace (64) connecting at least two of the spanning members (56), wherein said brace comprises intersecting straps selectively orthogonally oriented relative to the brace (Fig. 10). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a web as in Horobin in the structure of Vaughan et al. '060 to form the structure of the tie.

Regarding claim 6, Vaughan et al. '060 shows an upwardly open receptacle having a height greater than its width (Fig. 19).

Regarding claim 7, Vaughan et al. '060 shows an additional horizontal row of circumferentially closed (1220, 1320, 1420) openings includes at least three openings including a first outer opening (1220), a second outer opening (1420), and a central opening (1320) located between the first outer opening and the second outer opening. Vaughan et al. '060 does not show rounded elongated openings, the first outer opening and the second outer opening each have a height greater than that of the central opening. Horobin shows elongated rounded openings, the first outer opening (E) and the second outer opening (D) each has a height greater than that of the central opening (B) (Fig. 10). It would have been obvious to one of ordinary skill in the art at the time

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the present invention was made to use elongated, rounded, openings and higher openings on the outer sides of the central opening to make the transition to the outer plates.

Regarding claim 10, Vaughan et al. '060 shows the lowermost spanning member has at least one circumferentially closed, rounded opening formed therein (aperture to right of 1710 and underneath 1620) (Fig. 15).

### ***Claim Objections***

Claims 9, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Allowed Claims***

Claims 11-18, 21, are allowed.

Claim 13-18 depend from claim 12 and are therefore allowed.

### ***Response to Arguments***

Applicant's arguments filed 6/28/04 have been fully considered but they are not persuasive.

Applicant argues that the upwardly open receptacle has an interior with a height greater than the width in the instant invention.

Examiner maintains that the left and right sides of 1950 in Fig. 15 have a height greater than the width.

Applicant argues that there is one closed opening in the lowermost spanning member.

Examiner maintains that the lowermost spanning member is 1620 and 1710 with one opening therein as seen in (Fig. 15).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Young shows an insulating non-removable type concrete wall forming structure and device and system for attaching wall coverings thereto. Mensen shows a web member for concrete form walls. Cymbala et al. reveals an insulating concrete form system. Vaughan et al. '449 shows a concrete forming system with brace ties. Severino shows insulated concrete forming system.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV  
July 23, 2004



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600



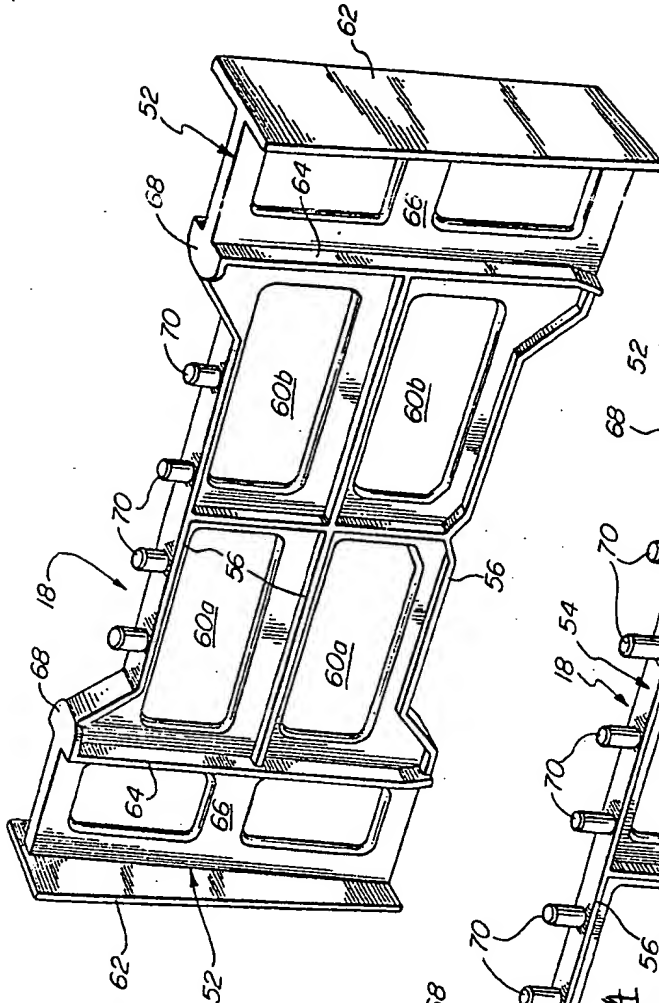


FIG. 9

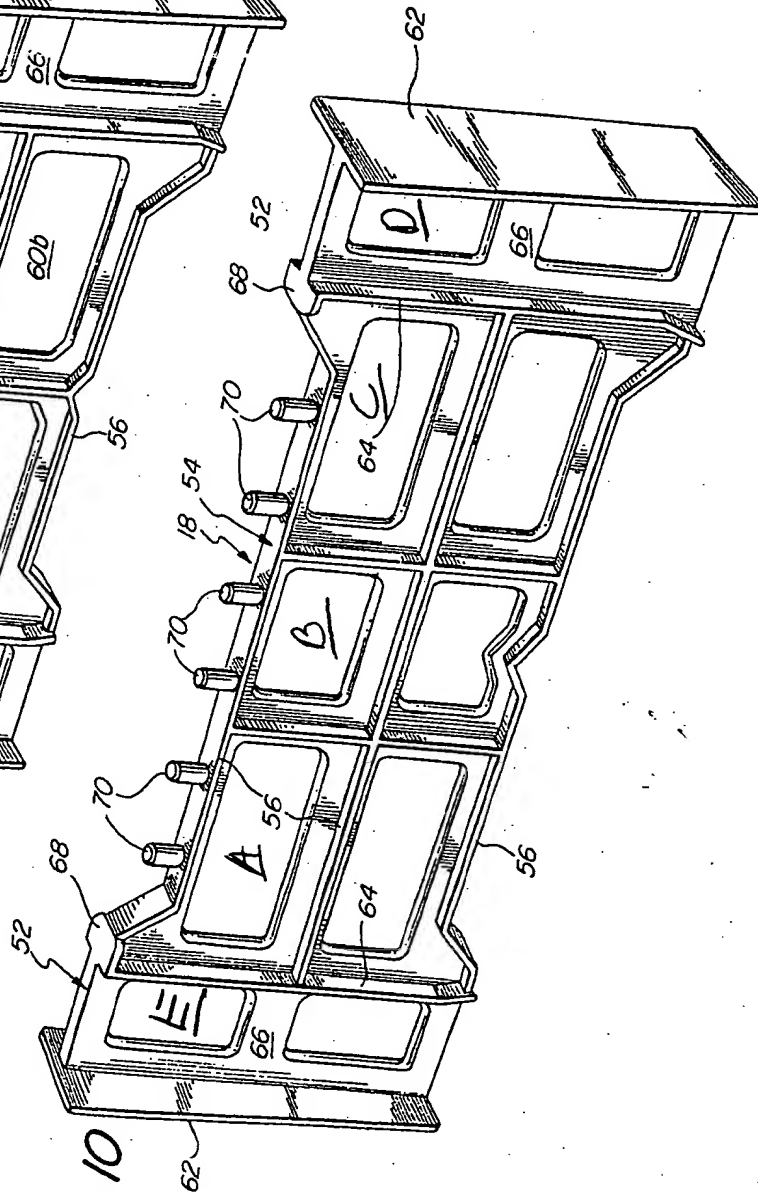


FIG. 10